



**Virginia
Regulatory
Town Hall**

**Periodic Review and
Notice of Intended Regulatory Action
Agency Background Document**

Agency Name:	Board of Nursing Home Administrators
VAC Chapter Number:	18 VAC 95-20-10 et seq.
Regulation Title:	Regulations Governing the Practice of Nursing Home Administrators
Action Title:	Periodic review
Date:	5/8/01

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

Regulations are promulgated to provide qualifications for the licensure of nursing home administrators and requirements the administrator-in-training program. Provisions establish requirements for renewal or reinstatement of a license, standards for practice, and fees to support the regulatory and disciplinary activities of the board.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The statutory authority for this regulation is found in § 54.1-2400 and Chapter 31 of Title 54.1 of the Code of Virginia.

Section 54.1-2400 establishes the general powers and duties of health regulatory boards including the responsibility to establish qualifications for licensure, to set fees and schedules for renewal, to establish requirements for an inactive license and to promulgate regulations, in accordance with the Administrative Process Act, which are reasonable and necessary to effectively administer the regulatory system.

§ 54.1-2400. General powers and duties of health regulatory boards.--The general powers and duties of health regulatory boards shall be:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*
- 4. To establish schedules for renewals of registration, certification and licensure.*
- 5. To levy and collect fees for application processing, examination, registration, certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.*
- 6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 and Chapter 25 of this title.*
- 7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate or license which such board has authority to issue for causes enumerated in applicable law and regulations.*
- 8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.*
- 9. To take appropriate disciplinary action for violations of applicable law and regulations.*

10. *To appoint a special conference committee, composed of not less than two members of a health regulatory board, to act in accordance with § 9-6.14:11 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi) impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final thirty days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the thirty-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 9-6.14:12, and the action of the committee shall be vacated. This subdivision shall not be construed to affect the authority or procedures of the Boards of Medicine and Nursing pursuant to §§ 54.1-2919 and 54.1-3010.*
11. *To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 9-6.14:12, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 9-6.14:11 shall serve on a panel conducting formal proceedings pursuant to § 9-6.14:12 to consider the same matter.*
12. *To issue inactive licenses and certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of such licenses or certificates.*

In addition to general provisions in § 54.1-2400, the Board is guided by provisions in the Chapter 31 related to the licensure and regulation of nursing home administrators as follows:

§ 54.1-3100. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Nursing Home Administrators.

"Nursing home" means any public or private facility required to be licensed as a nursing home under the provisions of Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 and the regulations of the Board of Health.

"Nursing home administrator" means any individual charged with the general administration of a nursing home regardless of whether he has an ownership interest in the facility.

§ 54.1-3101. Board of Nursing Home Administrators; terms; officers; quorum; special meetings.

The Board of Nursing Home Administrators shall consist of seven members, three who are licensed nursing home administrators and four who are from professions and institutions concerned with the care and treatment of chronically ill and elderly patients. Two of the licensed

nursing home administrators shall be administrators of proprietary nursing homes. The terms of Board members shall be four years.

The Board shall annually elect a chairman. Four members of the Board, including one who is not a licensed nursing home administrator, shall constitute a quorum. Special meetings of the Board shall be called by the chairman upon the written request of any three members.

The Board shall be authorized to promulgate canons of ethics under which the professional activities of persons regulated shall be conducted.

§ 54.1-3102. License required.

In order to engage in the general administration of a nursing home, it shall be necessary to hold a nursing home administrator's license issued by the Board.

§ 54.1-3102.1. Waiver of experiential requirements for licensure authorized.

The Board may waive the experiential or practicum requirements for an applicant for a nursing home administrator's license if the applicant demonstrates significant experience, such as, but not limited to, twenty years of executive experience as an officer in the home office of one or more multi-facility nursing home companies and a minimum of four years of executive responsibility for the operation of one or more nursing homes.

§ 54.1-3103. Administrator required for operation of nursing home; operation after death, illness, etc., of administrator; notification of Board.

All licensed nursing homes within the Commonwealth shall be under the supervision of an administrator licensed by the Board. If a licensed nursing home administrator dies, becomes ill, resigns or is discharged, the nursing home which was administered by him at the time of his death, illness, resignation or discharge may continue to operate until his successor qualifies, but in no case for longer than six months. The temporary supervisor or administrator shall immediately notify the Board of Nursing Home Administrators and the Commissioner of Health that the nursing home is operating without the supervision of a licensed nursing home administrator.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

An announcement of the board's review of its regulations governing the licensure of nursing home administrators was posted on the Virginia Regulatory Townhall, sent to the Registrar of Regulations, and sent to persons on the Public Participation Guidelines mailing list for the board. Public comment was received until March 1, 2001. During the 30-day comment period, no comments were received from members of the public.

A committee of the Board and the full Board of Nursing Home Administrators held three public meetings on to conduct a review of regulations and discuss related issues. Based on the issues

raised and the need for clarification of some provisions, the Board voted to request permission to proceed with certain amendments to regulations.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The goals for this regulation are as follows:

1) Achieve high ratings on Customer Service Satisfaction Survey for application process and licensure renewal.

The Board reviewed the responses of recent licensees on the Customer Service Satisfaction Surveys and determined that the application process and renewal of licensure was effective in that instructions for making application are clear and easy to understand and complete. Of those that responded, 91.3% of administrator applicants and 100% of preceptors agreed or strongly agreed that the instructions were easy to understand; 97.1% of administrator applicants and 90% of preceptors agreed or strongly agreed that the application was processed promptly; and 96.3% of administrator applicants and 100% of preceptors agreed or strongly agreed that the forms were easy to complete. Therefore, only minor changes in regulations are being considered in the application process.

2) Review training and licensure requirements to ensure safety to practice.

To measure whether training and licensure requirements are sufficient to ensure safety to practice, the Board has reviewed statistics from the enforcement division of the Department on the number of complaints filed against nursing home administrators and the number of violations that were found. In 1997, there were 43 complaints received, 23 were investigated; from that number there were 6 violations found for a rate per 1,000 of 6.64. In 1998, there were 42 complaints received, 25 were investigated; from that number there were 5 violations found for a rate per 1,000 of 5.49. In 1999, there were 16 complaints received, 16 were investigated; from that number there were 8 violations found for a rate per 1,000 of 8.00. In 2000, there were 22 complaints received, 21 were investigated; from that number there were 3 violations found for a rate per 1,000 of 2.97.

Based on the complaint history and the experience of the Board in disciplinary cases, the current requirements for training and licensure appear to be sufficient to ensure administrators are minimally qualified to practice.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

There were no specific alternatives for achieving the purpose of the existing regulation considered as a part of the periodic review process, since the basic requirements for licensure as a nursing home administrator are consistent with national standards and minimal in assuring the qualification of someone entrusted with the operation of such a facility. While the Board determined that amendments for clarification, consistency and better compliance were necessary, the regulation represents the least burdensome alternative available for achieving the purpose.

The one issue identified which could lead to a less burdensome regulation is the problem of training in a facility outside the state. Current regulations allow for such training only in certain licensed facilities in Virginia and also require that a preceptor be a Virginia-licensed nursing home administrator, registered with the board as a preceptor. The problem arises when a trainer has completed most or some of his training in another state but moves to Virginia and needs to complete his training program. Under the current rules, none of that time spent training in a licensed facility out-of-state could be counted. In recognition of the population's mobility and more national standards, the Board will consider whether any amendments are advised. To recognize training facilities and preceptors in other states, the board will consider comparability and issues of patient safety.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The board is recommending amendments to its regulations for the licensure of nursing home administrators in order to clarify certain sections or for adaptability to computerized testing. The Board will also consider amendments that would enable a trainee to work in a practicum or administrator-in-training program outside of Virginia in a licensed nursing care facility under the supervision of a nursing home administrator licensed in that jurisdiction.

Substance

Please detail any changes that would be implemented.

18 VAC 95-20-10. Definitions.

The Board recommends amendments to clarify that the national examination is the test offered by the National Association of Examiners for Long Term Care Administrators or any other test

approved by the board to determine competency. Some modification to the definition of a preceptor may be necessary if the Board decides to recognize preceptors licensed in other states.

18 VAC 95-20-80. Fees.

It is recommended that all fees be included in subsection A and that the current language in section 130 become subsection B.

18 VAC 95-20-175. Continuing education requirements.

An amendment would specify a period of three years for maintenance of CE documentation; the current regulation implies that records must be kept indefinitely. There are also amendments recommended to make the type of documentation required less burdensome and more consistent with what CE providers actually give to participants.

18 VAC 95-20-220. Qualifications for initial licensure.

The Board may consider amendments that would permit someone to use a preceptor in another state registered with the licensing board of that jurisdiction.

18 VAC 95-20-230. Application package. & 18 VAC 95-20-290. Examination requirements.

The Board recommends amendments for consistency with the current computerized administration of the exam. Some of the requirements and deadlines are no longer necessary.

18 VAC 95-20-300. Administrator-in-training qualifications.

Amendments that would permit someone to use a preceptor in another state registered with the licensing board of that jurisdiction would also be considered in this section.

18 VAC 95-20-310. Required hours of training.

There is some confusion about whether the hours in an internship could be counted towards the required practicum in an AIT (Administrator-in-training) program; amended language would clarify subsection C 2.

18 VAC 95-20-330. Training facilities.

Amendments will be considered to: 1) permit training in a licensed nursing facility in another state, provided the requirements for licensure and the AIT program are comparable to those in Virginia; 2) clarify that institutions are “operated by” rather than licensed by MHMRSAS; and 3) examine whether there are any nursing homes owned or operated by a city, county, or the Commonwealth.

18 VAC 95-20-340. Supervision of trainees.

There may be a need to clarify the term “direct supervision” to ensure that preceptors and trainees understand the responsibilities of the preceptor during training in a licensed facility.

18 VAC 95-20-380. Qualifications of preceptors.

Amendments that would permit someone to use a preceptor in another state registered with the licensing board of that jurisdiction would also be considered in this section.

18 VAC 95-20-390. Training plan.

For greater clarity, the Board may want to incorporate by reference the 1996 Domains of Practice.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

In its preliminary analysis of the proposed regulatory action, the agency has determined that there is no potential impact on the institution of the family and family stability and no effect on the assumption of responsibility. Likewise, there should be no effect on disposable family income.